

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to licensure

The Plumbing and Mechanical Systems Board hereby amends Chapter 28, “Plumbing and Mechanical Systems Board—Licensure Fees,” Chapter 29, “Plumbing and Mechanical Systems Board—Application, Licensure, and Examination,” Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” Chapter 35, “Plumbing and Mechanical Systems Board—Licensure of Nonresident Applicant—Reciprocity,” Chapter 57, “Plumbing and Mechanical Systems Board—Declaratory Orders,” and Chapter 62, “Plumbing and Mechanical Systems Board—Military Service and Veteran Reciprocity,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 105.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 105, and 272C and 2020 Iowa Acts, House File 2627.

Purpose and Summary

These amendments largely reflect changes across several chapters of the Iowa Administrative Code that are necessary to comply with and implement 2020 Iowa Acts, House File 2627.

2020 Iowa Acts, House File 2627, established guidelines for considering and reviewing the criminal history of license applicants or prospective applicants, including a process by which any applicant may petition the Board to determine whether having a criminal history would disqualify the applicant from receiving a license. The amendments to Chapters 28, 29, 32, and 57 explain the “eligibility determination” process and incorporate other legislative guidelines for considering and reviewing criminal history in the course of deciding whether to issue a license or whether to impose discipline on an existing licensee.

2020 Iowa Acts, House File 2627, also established alternative pathways to Iowa licensure for: (1) military spouses, (2) newly established Iowa residents who possess a license or certification from another jurisdiction, and (3) newly established Iowa residents whose practice in the profession in another jurisdiction did not require a license. The amendments to Chapters 28, 35, and 62 add structure and detail to those alternative pathways.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5477C**. No public comments were received. There are two minor changes from the Notice. Item 15 was amended to change the catchword from “Definition” to “Definitions” and to make a grammatical correction. The item statement for Item 24 was corrected for accuracy.

Adoption of Rule Making

This rule making was adopted by the Board on June 1, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to the Board's waiver provisions contained in 641—Chapter 31.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 18, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 28.1(2) as follows:

28.1(2) Fees for three-year reciprocal licenses or three-year licenses obtained by verification in accordance with 641—Chapter 35 are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is \$180.
- c. A master license as defined in 641—subrule 29.2(3) is \$240.
- d. Fees for all reciprocal licenses or three-year licenses obtained by verification in accordance with 641—Chapter 35 issued for a period of less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 2. Rescind paragraph **28.1(3)“h.”**

ITEM 3. Adopt the following **new** subrule 28.1(13):

28.1(13) The fee for submitting a petition for eligibility determination as defined in 641—subrule 29.13(2) is \$25.

ITEM 4. Adopt the following **new** rule 641—28.3(105):

641—28.3(105) Waiver of fees. The board shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

ITEM 5. Amend **641—Chapter 28**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 105.9 as ~~amended by 2013 Iowa Acts, Senate File 427 and 272C.15.~~

ITEM 6. Adopt the following **new** definitions of “Complete criminal record,” “Conviction,” “Directly relates,” “Disqualifying conviction” and “Eligibility determination” in rule **641—29.1(105)**:

“*Complete criminal record*” means the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“*Conviction*” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Directly relates*” or “*directly related*” means either that the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession; or that the circumstances under which an offense was committed are customary to the profession.

“*Disqualifying conviction*” or “*disqualifying offense*” means a conviction directly related to the practice of the profession.

“*Eligibility determination*” means the process by which a person who has not yet submitted a completed license application may request that the board determine whether one or more of the person’s convictions are disqualifying offenses that would prevent the individual from receiving a license or certification.

ITEM 7. Amend subparagraph **29.2(4)“a”(3)** as follows:

(3) Effective July 1, 2017, contractor licensure under Iowa Code chapter 105 ~~as amended by 2013 Iowa Acts, Senate File 427,~~ shall constitute registration as a contractor under Iowa Code chapter 91C.

ITEM 8. Amend paragraph **29.5(4)“c”** as follows:

c. ~~Documentation of criminal convictions related to the practice of the profession, which shall include a full explanation from the applicant~~ applicant’s complete criminal record, including the applicant’s personal statement regarding whether each offense directly relates to the practice of the profession. No application shall be considered complete unless and until the ~~licensee~~ applicant responds to board requests for additional information regarding ~~applicant~~ the applicant’s complete criminal convictions record.

ITEM 9. Amend subrule 29.11(1) as follows:

29.11(1) Upon receipt of a completed application, the board executive officer or designee has discretion to:

a. Authorize the issuance of the license, certification, or examination application.

b. Refer the application to a committee of the board for review and consideration when the board executive officer determines that matters ~~including, but not limited to, prior criminal history, chemical dependence, competency, physical or psychological illness, professional liability claims or settlements, professional disciplinary history, education or experience,~~ raised in or revealed by the application are relevant in determining the applicant’s qualifications for a license, certification, or examination. Matters that may justify referral to a committee of the board include, but are not limited to:

(1) Prior criminal history, which is reviewed and considered in accordance with Iowa Code chapter 272C and rule 641—29.13(105).

(2) Chemical dependence.

(3) Competency.

(4) Physical or psychological illness or disability.

(5) Judgments entered on, or settlements of, claims, lawsuits, or other legal actions related to the profession.

(6) Professional disciplinary history.

(7) Education or experience.

ITEM 10. Adopt the following new rule 641—29.13(105):

641—29.13(105) Use of criminal convictions in eligibility determinations and initial licensing decisions.

29.13(1) License application. Unless an applicant for licensure petitions the board for an eligibility determination, the applicant’s convictions will be reviewed when the board receives a completed license application.

a. *Full disclosure required.* An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. *Documentation and personal statement.* An applicant with one or more convictions must submit the complete criminal record for each conviction and a personal statement regarding whether

each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

c. Rehabilitation. An applicant must as part of the license application submit all evidence of rehabilitation that the applicant wishes to be considered by the board. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

d. Nonrefundable fees. Any application fees will not be refunded if the license is denied.

29.13(2) Eligibility determination. An individual who has not yet submitted a completed license application may petition the board for an eligibility determination. An individual with a conviction is not required to petition the board for an eligibility determination before applying for a license. To petition the board for an eligibility determination, a petitioner must submit all of the following:

- a.* A completed eligibility determination form, which is available on the board's website;
- b.* The complete criminal record for each of the petitioner's convictions;
- c.* A personal statement regarding whether each conviction directly relates to the practice of the profession and why the board should find the petitioner is rehabilitated;
- d.* All evidence of rehabilitation that the petitioner wants the board to consider; and
- e.* Payment of a nonrefundable fee in the amount of \$25.

29.13(3) Appeal. A petitioner found ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing nondisciplinary contested case proceedings apply unless otherwise specified in this rule. If the petitioner fails to timely appeal, the board's written decision will become a final order.

a. Presiding officer. The presiding officer will be the board. However, any party to an appeal of a license denial or ineligibility determination may file a written request, in accordance with rule 641—33.10(17A), requesting that the presiding officer be an administrative law judge. Additionally, the board may, on its own motion, request that an administrative law judge be assigned to act as presiding officer. An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case proceeding under this rule must possess a juris doctorate degree. When an administrative law judge serves as the presiding officer, the decision rendered will be a proposed decision.

b. Burden. The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

c. Judicial review. A petitioner or applicant must appeal an ineligibility determination or a license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

29.13(4) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

ITEM 11. Amend **641—Chapter 29**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 105.2, 105.5, 105.9, 105.18, 105.19, 105.20, 105.22, and 272C.3 and ~~2013 Iowa Acts, Senate File 427, and 272C.15.~~

ITEM 12. Adopt the following new definitions of “Conviction,” “Directly relates” and “Disqualifying conviction” in rule ~~641—32.1(105,272C)~~:

“*Conviction*” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Directly relates*” or “*directly related*” means either that the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession; or that the circumstances under which an offense was committed are customary to the profession.

“*Disqualifying conviction*” or “*disqualifying offense*” means a conviction directly related to the practice of the profession.

ITEM 13. Amend subrule 32.2(5) as follows:

32.2(5) Conviction of a ~~felony listed in Iowa Code section 105.22(4)~~ disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the record final order or judgment or conviction or plea of guilty ~~shall be in this state or another state, territory, or country~~ constitutes conclusive evidence of such the conviction.

ITEM 14. Amend ~~641—Chapter 35~~, title, as follows:

PLUMBING AND MECHANICAL SYSTEMS BOARD—~~ALTERNATIVE LICENSURE OF~~
~~NONRESIDENT APPLICANT—RECIPROCITY PATHWAYS~~

ITEM 15. Amend rule ~~641—35.1(105)~~ as follows:

~~641—35.1(105) Definition~~ Definitions. For purposes of this chapter, the following ~~definition applies~~ definitions apply:

“*Board*” means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

“*Full time*” means a minimum of 1,700 hours of work in a one-year period.

“*Issuing jurisdiction*” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

“*Transferring jurisdiction*” means the specific issuing jurisdiction on which an applicant relies to seek licensure in Iowa by verification under this chapter.

ITEM 16. Amend subrule 35.2(2) as follows:

35.2(2) The board shall not enter into a reciprocity agreement with another state unless the other state grants the same reciprocity licensing privileges to residents of Iowa who have obtained Iowa plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic licenses under Iowa Code chapter 105 as ~~amended by 2013 Iowa Acts, Senate File 427~~.

ITEM 17. Amend rule ~~641—35.3(105)~~, catchwords, as follows:

~~641—35.3(105) Application~~ Licensure by reciprocity.

ITEM 18. Amend subrule 35.3(1) as follows:

35.3(1) ~~Registration~~ Reciprocity requirements. The board may issue a reciprocal license if all of the following criteria are met:

- a. The applicant is a nonresident of Iowa;
- b. The applicant possesses a valid plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic license ~~issued from a state~~ an issuing jurisdiction with which the board has entered into a reciprocity agreement;
- c. The applicant has paid the appropriate fee or fees required in 641—Chapter 28;
- d. The applicant meets the minimum qualifications for licensure set forth in rule 641—29.4(105); and
- e. The applicant agrees to comply with all provisions of Iowa law and applicable administrative rules.

ITEM 19. Adopt the following new rules 641—35.4(105) and 641—35.5(105):

641—35.4(105) Licensure by verification. Licensure by verification is available under the following circumstances.

35.4(1) Eligibility. A person may seek licensure by verification if all of the following criteria are satisfied:

- a. The person is licensed, certified, or registered in at least one other issuing jurisdiction;
- b. The person has been licensed, certified, or registered by another issuing jurisdiction for at least one year;
- c. The scope of practice in the transferring jurisdiction is substantially similar to the scope of practice in Iowa;
- d. The person's license, certification, or registration is in good standing in all issuing jurisdictions in which the person holds a license, certificate, or registration; and
- e. The person either:
 - (1) Establishes residency in the state of Iowa; or
 - (2) Is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station.

35.4(2) Board application. The applicant must submit all of the following:

- a. A completed application for licensure by verification.
- b. Payment of the appropriate fee or fees required by 641—Chapter 28.
- c. A verification form completed by the transferring jurisdiction, verifying that the applicant's license, certificate, or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the transferring jurisdiction to the board.
- d. Proof of residency in the state of Iowa or proof of military member's official permanent change of station. Proof of residency may include:
 - (1) A residential mortgage, lease, or rental agreement;
 - (2) A utility bill;
 - (3) A bank statement;
 - (4) A paycheck or pay stub;
 - (5) A property tax statement;
 - (6) A document issued by the federal or state government; or
 - (7) Any other board-approved document that reliably confirms Iowa residency.
- e. Proof of passing the applicable Iowa licensing examination.
- f. Documentation of the applicant's complete criminal record in accordance with 641—paragraph 29.5(4) "c," including the applicant's personal statement regarding whether each offense directly relates to the practice of the profession.

g. Copies of any relevant disciplinary documents, if another issuing jurisdiction has taken disciplinary action against the applicant.

35.4(3) Applicants with prior discipline. If another issuing jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved. A person whose license was revoked, or a person who voluntarily surrendered a license, in another issuing jurisdiction is ineligible for licensure by verification.

35.4(4) Applicants with pending licensing complaints or investigations. If an Iowa applicant is concurrently subject to a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another issuing jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

35.4(5) Temporary licenses. Applicants who satisfy all requirements for a license by verification under this rule, except for passing the applicable Iowa licensing examination, may be issued a temporary license that is valid for a period of three months and may be renewed once for an additional period of

three months. The applicant must submit proof of passing the applicable Iowa licensing examination before the temporary license expires.

641—35.5(105) Licensure by work experience in jurisdictions without licensure requirements.

35.5(1) *Work experience.*

a. An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a license to practice the profession may be considered to have met the applicable educational and training requirements if the person has at least three years of full time work experience within the four years preceding the date of application for initial licensure. For each application submitted under this rule, the board will determine whether the applicant's prior work experience was substantially similar to the applicable apprenticeship training that is required for individuals licensed under 641—Chapter 29.

b. If the board determines an applicant's prior work experience was not substantially similar to the scope of practice in Iowa, the applicant may submit a subsequent application for licensure by work experience if all of the following criteria are satisfied:

(1) The applicant enrolls in an apprenticeship program approved by the United States Department of Labor;

(2) The applicant obtains a board-issued apprentice license; and

(3) The applicant successfully completes one year in the apprenticeship program.

c. The applicant must satisfy all other license requirements, including passing any required examinations, to receive a license.

35.5(2) *Required documentation.* An applicant seeking to substitute work experience in lieu of satisfying applicable education or training requirements bears the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency, which may include:

(1) A residential mortgage, lease, or rental agreement;

(2) A utility bill;

(3) A bank statement;

(4) A paycheck or pay stub;

(5) A property tax statement;

(6) A document issued by the federal or state government; or

(7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of full time work experience within the four years preceding the application for Iowa licensure, which demonstrates that the work experience was substantially similar to an applicable apprenticeship program approved by the United States Department of Labor. Proof of work experience may include, but is not limited to:

(1) A letter from the applicant's prior employer or employers documenting the applicant's dates of employment and scope of practice;

(2) A paycheck or pay stub; or

(3) If the applicant was self-employed, business documents filed with the secretary of state or other applicable business registry or regulatory agency in the other jurisdiction.

c. Proof that the applicant's work experience involved a substantially similar scope of practice to the practice in Iowa, which must include:

(1) A written statement by the applicant detailing the scope of practice and stating how the work experience correlates to an applicable apprenticeship program approved by the United States Department of Labor; and

(2) Business or marketing materials detailing the services provided.

d. Proof that the other jurisdiction did not require a license to practice the profession, which may include:

(1) Copies of applicable laws;

(2) Materials from a website operated by a governmental entity in that jurisdiction; or

(3) Materials from a nationally recognized professional association applicable to the profession.

ITEM 20. Amend **641—Chapter 35**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~section~~ sections 105.21 ~~as amended by 2013 Iowa Acts, Senate File 427 and 272C.12.~~

ITEM 21. Adopt the following new rule 641—57.13(17A):

641—57.13(17A) Petition for eligibility determination. Petitions for eligibility determination in accordance with Iowa Code section 272C.15(5) are not declaratory order proceedings and are not governed by this chapter. Petitions for eligibility determination are instead governed by 641—Chapter 29.

ITEM 22. Amend **641—Chapter 57**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~section~~ sections 17A.9 and 272C.15.

ITEM 23. Amend **641—Chapter 62**, title, as follows:
PLUMBING AND MECHANICAL SYSTEMS BOARD—
MILITARY SERVICE₂ ~~AND~~ VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY
SERVICE MEMBERS

ITEM 24. Amend rule 641—62.1(85GA,ch1116) as follows:

641—62.1(85GA,~~ch1116~~ 272C) Military service, and veteran reciprocity, and spouses of active duty service members. The board hereby adopts by reference 641—Chapter 196, “Military Service₂ and Veteran Reciprocity, and Spouses of Active Duty Service Members,” Iowa Administrative Code.

ITEM 25. Adopt the following new rule 641—62.2(272C):

641—62.2(272C) Spouses of military members. A person who is married to an active duty member of the military forces of the United States, and who is accompanying the member on an official permanent change of station, may seek licensure by verification in accordance with 641—Chapter 35.

ITEM 26. Amend **641—Chapter 62**, implementation sentence, as follows:
~~This rule is~~ These rules are intended to implement 2014 Iowa Acts, ~~chapter 1116, division VI~~ Iowa Code sections 272C.4 and 272C.12.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/21.